

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

DARLENE MCDAY, individually and  
as Executrix of the Estate of Dante  
Taylor, and TEMPLE MCDAY

Plaintiffs,  
v.

STEWART ECKERT, Superintendent,  
Wende Correctional Facility;  
MARGARET STIRK, Unit Chief,  
Wende Correctional Facility; KRISTEN  
MURATORE, Forensic Program  
Administrator, Wende Correctional  
Facility; SERGEANT TIMOTHY  
LEWALSKI; SERGEANT SCOTT  
LAMBERT; CORRECTION OFFICER  
McDONALD; CORRECTION OFFICER  
FREEMAN; CORRECTION OFFICER  
THOMAS WHITE; CORRECTION  
OFFICER J. HORBETT;  
CORRECTION OFFICER D. JANIS;  
CORRECTION OFFICER MELVIN  
MALDONADO; CORRECTION  
OFFICER MARK COLLETT;  
CORRECTION OFFICER  
GREIGHTON; CORRECTION  
OFFICER THEAL; CORRECTION  
OFFICER BARON; JILL OLIVIERI,  
R.N.; DIANE DIRIENZO, R.N.; LISA  
PRISHEL, R.N.; DEBRA STUBEUSZ,  
M.D.; ANJUM HAQUE, M.D.;  
BERTRAM BARALL, M.D.; KELLY  
KONESKY, LCSW-R; DANA  
MANCINI, SW2; JOHN and JANE  
DOES 1-10; and JOHN and JANE  
SMITH 1-14,

Defendants.



**DECISION AND ORDER**

The claims in this action relate to the death of, and alleged assault upon, Dante Taylor—an inmate who was confined at Wende Correctional Facility. The case has been referred to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. §§ 636(b)(1)(A)–(C). Dkt. 23.

On February 28, 2024, Plaintiff Darlene McDay moved to amend the Complaint. Dkt. 281. Various defendants opposed the motion, *see* Dkt. 288-292, and Plaintiff replied. Dkt. 296. On April 12, 2024, Judge McCarthy issued a Report and Recommendation (“R&R”), recommending that the [281] motion be denied. Dkt. 299. No party objected to the R&R, and the time to do so has expired.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). For a “dispositive matter, the district court reviews *de novo* the parts of the R&R to which the parties object[,] and reviews for clear error the parts of the R&R to which the parties do not object.” *Allen v. United Parcel Serv., Inc.*, 988 F. Supp. 2d 293, 297 (E.D.N.Y. 2013) (citing Fed. R. Civ. P. 72(b)(3)). For a “non-dispositive matter, the district court reviews the R&R for clear error.” *Id.* (citing Fed. R. Civ. P. 72(a)).

Authority “is divided about whether a motion for leave to amend a complaint is a dispositive or non-dispositive matter.” *Id.* (citing *Jean-Laurent v. Wilkerson*, 461 Fed. Appx. 18, 25 (2d Cir. 2012)). But where, as here, “no party has objected to [the] R&R,” this “determination is not necessary,” because “review is based on the same ‘clear error’ standard” in either instance. *Von Rohr Equip. Corp. v. Tanner*

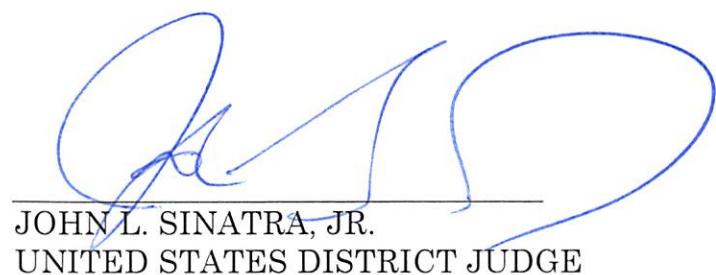
*Bolt & Nut Corp.*, No. 17CV2913NGGRER, 2017 WL 5067406, at \*1 (E.D.N.Y. June 12, 2017).

This Court has carefully reviewed Judge McCarthy's R&R and the relevant record. Based on that review, the Court concludes that the R&R is not clearly erroneous. As such, the Court accepts Judge McCarthy's recommendation.

For the above reasons, as well as those in the R&R, the [281] motion to amend is DENIED. The case is referred back to Judge McCarthy consistent with the June 29, 2020 referral order. *See* Dkt. 23.

SO ORDERED.

Dated: April 30, 2024  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE